

Award No. 1321
Docket No. 1243
2-FtW&DC-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 140, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)

FORT WORTH AND DENVER CITY RAILWAY COMPANY

THE WICHITA VALLEY RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement the carrier improperly compensated Car Inspectors W. A. White and Maxy Melton for the services which they performed after 8 A. M., the close of their shift on September 7, 1947, and that accordingly the carrier be ordered to additionally compensate these employes each in the amount of a minimum of one hour at the pro rata rate rather than on the minute basis.

EMPLOYEES' STATEMENT OF FACTS: At Fort Worth, Texas, the carrier maintains for the purpose of the inspection of freight cars in the train yard, and passenger cars at the passenger depot, three shifts of car inspectors, seven days per week. There are two car inspectors assigned on the 8 A. M. to 4 P. M. shift, two assigned on the 4 P. M. to 12 Midnight shift and two assigned on the 12 Midnight to the 8 A. M. shift.

These inspectors check in and out at the freight yard, which is approximately one-half mile from the passenger depot.

These claimants, Car Inspectors White and Melton, are regularly assigned on the 12 Midnight to 8 A. M. shift, seven days per week, and on Sunday, September 7, 1947, they were required to remain on duty at the passenger depot for about thirty minutes after the close of their shift, due to passenger train No. 1 arriving approximately forty minutes late. This is affirmed by copy submitted of the explanatory letters dated October 1, 1947, July 1, 1948, and August 27, 1948, respectively, identified as Exhibits A, B and C. Exhibit A is signed by F. A. Smerke, general foreman; Exhibit B is signed by C. B. Ragon, assistant to vice president and general manager, and Exhibit C is signed by the claimants and the four other car inspectors.

These employe claimants turned in on their time cards a minimum of one hour for thirty minutes service performed after 8 A. M., the close of their shift, Sunday, September 7, 1947, and the carrier has declined to allow same, but instead paid the claimants for thirty minutes at only the time and one-half rate. For confirmation see Exhibits A and B.

The agreement effective April 1, 1943, as amended effective October 16, 1944, is controlling.

Sunday, September 7, 1947, and that claim for additional compensation is completely devoid of merit or equity and should therefore be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

The incident in question occurred on the calendar day of Monday, September 8, 1947. However, because the trick commenced at 12 o'clock, midnight, preceding, it is conceded, by virtue of Example 3, Rule 3, to be a Sunday shift and Sunday work.

The employment in question, while customarily worked seven days a week (as permitted under Rule 6) is bulletined, 12 Midnight to 8:00 A. M., six days per week, Monday through Saturday. Thus there is established a regular work week from which firm basis other provisions of the agreement, such as, those relating to "overtime" (R. 3, 5 and 6), "Working when shop close down" (R. 24) and perhaps other contingencies, operate and are computed. Therefore, we find that Sunday is a day outside of the regular bulletined work-week in the case at hand.

The phrase contained in Rule 3, reading, "**All overtime continuous with regular bulletin hours** will be paid for at the rate of time and one-half until relieved * * *," plus the special treatment accorded Sunday work in the same Rule 3, would, we find, control over the general clause appearing as Rule 5 (a). Such special treatment of a particular subject is, under the usual rules of construction, afforded protection as against subsequent general language. The phrase appearing in Section 3, reading "except as may be provided in rules hereinafter set out", is recognition of the fact that contrary treatment may be accorded later in the rules under some special circumstance. Even in such case, however, express language would be required to bring those on regular bulletined hours within its coverage because of the special treatment accorded to subject in Section 3.

To uphold the employees' position here would not only result in pyramiding penalty upon penalty in some cases where Sunday overtime is involved, but invites the confusion which would result in applying Rule 5 (a) to cases where employees worked Sundays, a fourth of the time, half the time or full time. In short, the difficult question would be, what are the "regular working hours" in such instances. And there would be little consistency in granting the special overtime penalty in one case and denying it in another. There is a cardinal rule of interpretation of contracts to the effect that where an agreement is equally susceptible of two meanings, one of which would lead to a sensible result and another to an absurd one, the former will be adopted. We, therefore, conclude that Rule 5 (a) would not apply under the facts of this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.